IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2810 of 2007
To
FIRST APPEAL No. 2822 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SPECIAL LAND ACQUISITION OFFICER & 2 - Appellant(s)
Versus
MAFATBHAI FATABHAI - Defendant(s)

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Appearance :
MR SUNIT S SHAH, Govt.Pleader for appellants in F.A.Nos. 2810 to 2816 of 2007.

MS REETA CHANDARANA, AGP for Appellant in F.A. Nos.2817 to 2822 of 2007

MS RENU SINGH with MR YN RAVANI for opponent-claimants

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 12/09/2007

COMMON ORAL JUDGMENT

1. **The Special Land Acquisition Officer, Narmada Yojna, Unit No.13, Bharuch, the State of Gujarat, through Secretary, Narmada Water Resources, Water**

Supply and Kalpsar Department, and the Executive Engineer, Narmada Yojna Naher, Vibhag No.2/6, Bharuch, appellants – original opponents have filed these appeals under Sec.54 of the Land Acquisition Act read with Sec.96 of CPC against the judgment and award dated 5.5.2006 passed by the Addl.District Judge, Fast Track Court No.4, Bharuch, in L.A.R.Nos.2441 to 2453 of 1998, the main L.A.R. No.2442 of 1998. By the impugned judgment, the learned Judge has awarded Rs.37.50 per sq.mtr. as compensation over and above Rs.2.73 per sq.mtr. which has been awarded by the Land Acquisition Officer. Thus, in all, compensation of Rs.40.23 has been awarded.

2. All these appeals have already been admitted on 20.6.2007. On behalf of respondent-claimants, Ms.Renu Singh, learned advocate with Mr.Y.N.Ravani, learned advocate has appeared. It is submitted that these matters are covered by the earlier judgments of this Court in First Appeal Nos.3253 to 3264 of 2007 in the case of The Special Civil Land Acquisition Officer & 2 vs. Madhuben Ravjibhai, decided on 11.7.2007.

3. With the consent of the parties, this group of appeals is taken up for final disposal.

4. The Special Land Acquisition Officer and others, appellants-original opponents No.1, 2 and 3, have filed these appeals under Section 54 of the Land

Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, against the common judgment and award dated 5th May, 2006, passed by the learned Additional District Judge, Fast Track Court No.4, Bharuch, in Land Acquisition Reference Nos.2441 of 1998 to 2453 of 1998. The learned Judge by his impugned judgment was pleased to accept the reference partly and further directed that the claimants are entitled to Rs.37.50 paise per square metre additional compensation over and above Rs.2.73 paise per square metre awarded by the Land Acquisition Officer. Thus the learned Judge has awarded Rs.37.50 + Rs.2.73 = Rs.40.23 paise per square metre. The learned Judge has also awarded solatium and interest as per the provisions of the Land Acquisition Act.

5. A proposal was made by the Executive Engineer, Narmada Yojana, Canal Distribution Division No.34, Bharuch, to the State Government to acquire agricultural lands of Village Bhersam, Taluka: Vagra, District: Bharuch, for the public purpose of Saran Minor Canal under Narmada Project. On perusal of the said proposal, the Government was satisfied that the lands of Village Bhersam mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act which provide publication of

preliminary Notification and power of Officers therein was issued on 30.11.1995, which was published in the official gazette on the same day. Thereafter, necessary inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5-A(2) of the Act which provide hearing of objections, was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village Bhersam specified in the notification published under Section 4 of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, the Government was pleased to issue notification under Section 6 of the Act which provide declaration that land requires for public purpose on 21.5.1996 and which was published in the official gazette on the same day. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.60/- per square metre.

However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated 31.12.1996 offered compensation to the claimants at the rate of Rs.2.73 paise per square metre under Sec.11 of the Act. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act which provide for reference to Courts requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as Land Acquisition Reference Nos.2391 of 1998 to 2402 of 1998.

6. On behalf of the claimants, the claimant of Land Reference Case No.2442 of 1998, Nimeshbhai Ravjibhai Patel was examined at Exh.33, and another witness Omprakash Dahyabhai was examined at Exh.35. Except that, the claimants have not led any evidence.

6.1 Claimant Nimeshbhai Ravjibhai Patel has deposed

that as per the compensation case No.34/96, the land was acquired, and as far as that land is concerned, there are other neighbouring lands. All these cases were also acquired by the Compensation Case No.34/96. He has seen those lands in this behalf. He is also aware about the facts of other claimants. As far as those lands are concerned, the Land Acquisition Officer has passed the award of Rs.2.73 per square metre. According to him, the said compensation is very meagre amount and therefore they were constrained to file these reference applications in this behalf.

6.2 Before the Reference Court, they have claimed Rs.60/- per square metre. He has stated that all these lands are adjoining to each other, all these lands are fertile lands and the claimants have grown lot of crops. The quality and quantity of lands is also good. They are carrying agricultural activities with modern equipments and they are getting good crops in the said lands. They have also produced the documentary evidence which is produced at Exh.13 to 24 for the year from 1993 to 2003-2004. He has also produced the revenue record of the said lands. He

has stated that as regards cotton crop is concerned, they are able to obtain 20 Acre for which they are getting Rs.2,221/- per quintal. For proving the rate of cotton crop, he has produced the evidence from the Agriculture Produce Market Committee, Bharuch at Exh.25. He has further stated that they were having 20 Quintal per Acre. Out of the said agricultural operations from cotton crop, they were used to earn yearly Rs.44,420/-. Out of that expenses of 35% have been deducted and therefore they were able to get Rs.28,875/- per Acre as agriculture income in this behalf. He has also stated that as regards Tuver Dal is concerned, they were getting three crops in the year. Out of that, they were used to get 40 quintal of Tuver Dal. He has stated that the price of Tuver Dal for the year 1994-95 comes to Rs.1,435/- per quintal. They were getting the price of Dry Tuver Dal comes to Rs.1,660/- per quintal, for which they were used to get Rs.17,220/- per Acre. After deducting the expenses from that amount, they were getting Rs.48,500/-. In all they were used to get Rs.38,700/- per Acre. He has further stated that all these lands which were acquired, they were all

fertile lands and they have produced the revenue record at Exh.16. He has further stated that near the lands, there is well of one Shri Piyushbhai Bhagwanbhai which is situated at Block No.314 and there is also another well which belongs to Kalavatiben Narsinhbhai which is situated at Block No.323. They used to get water so that they can able to have good crop in this behalf. They have also install diesel engine so that the land will get more water. He has further stated that there is land of ONGC for Gandhar Oil Field Project which is 12 K.M. away from their lands and therefore their lands are situated in developed area. He has also stated that there is also GIDC Complex, there are offices of Government, Semi-Government offices, Banks, Schools etc. situated near their lands in this behalf. These all shows that the land has a potential value in this behalf.

6.3 He has also valued the land in question by Valuer Omprakash Dahyabhai and the Valuer has produced the report. He has valued the land in question at Rs.37.50 paise per square metre. He has stated that as far as land of Vora Sam is concerned,

the same is 2 k.m. away from them. As far as Vora Sam land is concerned, the District Court has granted Rs.38/- per square metre and the judgment of the Court is produced at Exh.12. He has further stated that as far as land of Village Saran is concerned, both the lands are situated adjoining to each other. He has stated that the claimants are entitled to 10% increase every year and also interest as per the provisions of Land Acquisition Act. He has also been cross-examined and he has denied the compensation given adequate in this behalf. The claimants have also produced the oral evidence of Omprakash Dahyabhai in this behalf. He has stated that he is B.Sc. Agriculture and carrying on the work of Land Valuation. His licence was issued by Ministry of Finance, New Delhi. He has stated that he has visited the land on 25.10.2004 and accordingly he has valued the land. He has examined the documents of the land in question. According to him, the value of the land is Rs.37.50 paise per square metre. He has also been cross-examined where he has stated that the value of the land, he has seen the fertility of land, development of village, value of crops and

agriculture equipments in this behalf. He has denied that there is no development in the land of Bhersam and stated that he has made the valuation after going through the documents in this behalf.

6.4 The learned counsel for the claimants have relied upon the evidence produced by the deponent which I have discussed earlier. Over and above, they have also produced the Map of village Vagra at Exh.30, Map of GIDC complex at Exh.27 to show that there is considerable development in the land. He has relied upon the judgment of the Court in Land Reference Case No.2408/97 of Village Vora Sam decided on 30.4.2005. He has also produced the reference case of Village Saran, Land Reference Case No.1462/97 which is produced at Exh.31. He has stated that previously the District Court by order dated 25.8.2004 has given additional compensation due to development of land, in view of the same the claimants are also entitled in this behalf.

7. After going through the oral as well as documentary evidence on record, the learned Judge held that the amount of compensation awarded by the

Land Acquisition Officer is meagre. As regards valuation of the land regarding adjoining land, the learned Judge has held that as far as village Vora Sam and other Villages are 3 k.m. away from the present land in question and therefore those judgments are not helpful or relevant in this behalf. The learned Judge has held that the land of Village Bhersam is a fertile land, however, as regards the valuation of land of other Village is concerned, the said village is not nearby the land in question which is acquired and therefore the said judgment and award will not be applicable to the present case. The learned Judge relying upon the report of Valuer, ultimately awarded the amount of Rs.37.50 paise per square metre. The learned Judge also granted solatium and interest as per the provisions of the Land Acquisition Act.

8. I have heard the learned AGP for the appellants and Mr.Y.N.Ravani with Ms.Renu Singh, learned advocates for the original claimant(s) in each appeal, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes

oral as well as documentary evidence adduced by the parties before the Reference Court. This Court has gone through the judgment of Hon'ble Apex Court in the case of *Special Land Acquisition, Davangere vs. P.Veerabhadarappa, etc. etc., AIR 1984 SC 774, (See: Para 7 on page 777)* where the Hon'ble Apex Court has laid down that the function of the Court in awarding compensation under the Act is to ascertain the market value of land at the date of the notification under Section 4(1) and the methods of valuation may be: (1) opinion of experts; (2) the prices paid within a reasonable time in *bona fide* transaction of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. What is emphasised in the said decision is that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. For the guidance of

courts in the country, it is laid down that yield method can be resorted to only when no other method is available. Applying the principles laid down in the above quoted decision to the facts of the present case, this Court finds that the Reference Court was not justified in determining the market value of the lands acquired on yield basis more particularly when the evidence in the form of previous award of the Reference Court relating to the lands of Village Vagra was available on record. The previous award of the Reference Court relating to the lands of Village Vagra is produced by the claimants at Exhibit 30. It indicates that the lands of Village Vagra were acquired for public purpose of ONGC Project pursuant to publication of notification issued under Section 4 of the Act in the official gazette on April 28, 1989. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.7/- per square metre. Being aggrieved and dissatisfied by the said judgment, the claimants had sought references and accordingly, the references were made to the District Court, Bharuch, where they were numbered as L.A.R.Nos.1282 of 1990 to 1291 of

1990. In those cases, witness Musabhai Umarji Patel was examined at Exhibit 96 whereas another witness Hanumanbhai Ishwarbhai Patel was examined at Exhibit 103 and witness Omprakash Dahyabhai Pandya was examined at Exhibit 109. Further, the claimants had also examined Raisang Babubhai Makwana at Exhibit 118 and witness Ramanbhai Pujabhai Vankar was examined at Exhibit 125. On behalf of the Acquiring Authorities, witness Harishchandra Kanaiyalal Shah was examined at Exhibit 131 and witness Parsottambhai Haribhai Chotaliya was examined at Exhibit 135. On appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated January 10, 2002 awarded additional amount of compensation to the claimants at the rate of Rs.31/- per square metre. Thus, those claimants were awarded compensation at the rate of Rs.38/- per square metre.

9. As observed earlier, it was asserted by witness claimant Kantibhai Bhailalbhai Patel that the lands of Village Vagra and the lands acquired in the instant cases were situated near each other. It was also claimed by him that the lands acquired from

Village Vagra were similar in all respects to the lands acquired in the instant case. This assertion was neither challenged by the Acquiring Authorities nor proved to be untrue. Under the circumstances, this Court is of the opinion that the previous award of the Reference Court relating to the lands of Village Vagra would furnish good guidance for the purpose of determining the market value of the lands acquired in the instant cases from Village Saran. It is well settled that the previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The record further shows that the previous award of the Reference Court relating to the lands of Village Vagra, which was rendered in Land Reference Case Nos.1282 to 1291 of 1990, was subjected to challenge in First Appeal Nos.1942 to 1951 of 2003 and cognate matters and that the High Court by judgment (Coram: J.M.Panchal, J. (as he was then) & Abhilasha Kumari, J.) in the matters of Dy.General Manager vs. Heirs of

deceased Ratanbhai Karsanbhai decided on 19.6.2006 upheld the same. The fact that the previous award of the Reference Court relating to the lands of Village Vagra has attained finality cannot be disputed by the learned counsel for the appellants. Therefore, the claimants were justified in placing reliance upon the same for the purpose of claiming enhanced compensation. There is a general consensus between the learned counsels for the parties that on the basis of the previous award relating to the lands of Village Vagra, as confirmed by the High Court, the claimants would be entitled to compensation, in all, at the rate of Rs.40.23/- per square metre. Thus, this Court does not find any merits in the appeals and, therefore, the appeals are liable to be dismissed.

10. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

11. The Civil Applications for stay filed in the

concerned appeals also stand disposed of accordingly.

(*K.M. Mehta, J.*)

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